

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1567 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PARIKH HANSALBHAI KARSHANBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. The petitioner - Parikh Hansalbhai Karsanbhai has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Mehsana, in exercise of powers under Section

3(1) of the PASA Act, dated January 3, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner. The detaining authority also took into consideration the statements of three anonymous witnesses, and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Ms. Subhadra Patel, learned advocate for the petitioner has raised many contentions. However, she has placed into service, the ground of delay to assail the order of detention. She submitted that the detaining authority relied upon the statements of anonymous witnesses which were recorded on August 13, 1999 and August 14, 1999. The statements were verified by Dy.S.P. on 24th August, 1999. However, the detaining authority verified the statement on 1st January, 2000. The delay of more than three months has not been explained by the detaining authority. No affidavit-in-reply is filed. She, therefore, urged that the petition may be allowed on this ground.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, it is amply clear that the order of detention is passed on 3rd January, 2000 on the basis of one registered offence and statements of three anonymous witnesses which are verified by the detaining authority on 1st January, 2000. These statements were recorded in the month of August and verified by Dy.S.P. on August 24, 1999. The detaining authority has recorded subjective satisfaction about the need for immediately preventing the petitioner from pursuing his activities and consequent need for exercise of powers under section 3 (1) of the PASA Act by the detaining authority. There is no allegation of any incident between August, 1999 to January, 2000. When the statements were verified, the detaining authority ought to have considered this aspect while exercising powers. The detaining authority ought to have considered the genuineness of need for immediately preventing the petitioner from pursuing his activities. If the delay is on the part of the sponsoring authority, the authority ought to have considered this lapse in the proposal. If

the delay is after the receipt of proposal on the part of the detaining authority, it is still worse. The order of detention, therefore, cannot be sustained. The same suffers from the defect of delay. The petition therefore, deserves to be allowed on this ground.

#. The petition is allowed. The order of detention dated January 3, 2000 is hereby quashed and set aside. The detenue - Parikh Hansalbhai Karsanbhai is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-